

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARRYL McGORE,

Plaintiff,

Case No. 1:10-cv-355

v.

Honorable Paul L. Maloney

UNKNOWN CROMPTON,

Defendant.

ORDER DENYING RECONSIDERATION

This is a civil rights action brought by a state prisoner pursuant to 42 U.S.C. § 1983. On April 28, 2010, the Court issued an opinion and order (docket ##7, 8) denying leave to proceed *in forma pauperis* because Plaintiff had three strikes within the meaning of 28 U.S.C. § 1915(g). The matter presently is before the Court on Plaintiff's "Motion to Vacate Judgment and Order" (docket #9), ostensibly filed under FED. R. CIV. P. 59.

Because the Court has not yet entered a judgment, Plaintiff's motion is not properly filed under Rule 59(e). Instead, the motion more properly is considered a motion for reconsideration under FED. R. CIV. P. 54(b), which provides that a non-final order is subject to reconsideration at any time before entry of a final judgment. Pursuant to Western District of Michigan Local Civil Rule 7.4(a), reconsideration is appropriate only when the movant "demonstrate[s] a palpable defect by which the Court and the parties have been misled [sic] . . . [and] that a different disposition must result from the correction thereof."

The Court has reviewed the arguments raised by Plaintiff and finds no ground for reconsideration of its prior determination. As discussed in the Court's opinion and order issued April 28, 2010, the three-strikes rule has been found constitutional against arguments that it violates equal protection, the right of access to the courts, and due process, and that it constitutes a bill of attainder and is *ex post facto* legislation. As a consequence, Plaintiff's constitutional arguments are meritless. Further, the Court properly concluded that Plaintiff had failed to allege facts falling within the exception to the three-strikes rule for imminent danger of serious physical injury. In sum, Plaintiff fails entirely to demonstrate any error, much less palpable error, in the Court's April 28, 2010 opinion and order denying leave to proceed *in forma pauperis*. Accordingly,

IT IS ORDERED that Plaintiff's motion for reconsideration (docket #9) is **DENIED**.

Dated: May 18, 2010

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge